

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 1:04cr37-LG-JMR-003

JERMAINE REYNOLDS

**ORDER GRANTING MOTION FOR SENTENCE
REDUCTION UNDER 18 U.S.C. § 3582(c)(2)**

This cause is before the Court on motion of the Federal Public Defender on behalf of the defendant, Jermaine Reynolds, for a retroactive application of sentencing guidelines [119] pursuant to 18 U.S.C. § 3582(c)(2) based upon recent amendments to the sentencing guidelines applicable to offenses involving cocaine base, and the subsequent decision by the United States Sentencing Commission [Sentencing Commission] to make this amendment retroactive, pursuant to United States Sentencing Guideline § 1B1.10 [USSG] effective March 3, 2008.

Reynolds pleaded guilty to Counts 1 and 6 of the indictment against him, and was sentenced on November 1, 2004, to term of 170 months imprisonment on the charge in Count 1 of the indictment; conspiracy to possess with intent to distribute a controlled substance in violation of 21 U.S.C. § 846. (Ct. R., Doc. 71.) Count 6 of the indictment was a criminal forfeiture count. (*Id.*) He received a period of supervised release of 5 years, and was assessed \$100.00. (*Id.*, pp. 3, 5.)

Subsequently, Reynolds received a reduction in sentence pursuant to FED.R.CRIM.P. 35(b) on motion of the United States. (Ct. R., Doc. 102.) Reynolds' sentence was reduced to 123 months imprisonment on November 16, 2006. (Ct. R., Doc. 103.) Information provided by the United States Probation Service [USPS] in connection with the current motion for change in

sentence provides that at the time of sentencing, Reynolds was held accountable for between 150 and 500 grams of cocaine base, which resulted in a base offense level of 34. He received a two level increase for possession of a weapon and a three level reduction for acceptance of responsibility. Based on a total offense level of 33 and a criminal history of III, the guideline imprisonment range was 168-210 months at the time of sentencing. The USPS advises that Reynolds is subject to a ten year mandatory minimum sentence.

The Court's authority under 18 U.S.C. § 3582(c)(2) extends to situations where the defendant was sentenced based on a sentencing range that has subsequently been reduced by an amendment to the Sentencing Guidelines, if such a reduction is consistent with the policy statements issued by the Sentencing Commission. *See United States v. Boe*, 117 F.3d 830, 831 (5th Cir. 1997). The applicable policy statement issued by the Sentencing Commission provides in pertinent part as follows:

(a) Authority:

(2) Exclusions - A reduction in the defendant's term of imprisonment is not consistent with the policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2) if

* * *

(B) [the crack cocaine sentence reduction amendment] does not have the effect of lowering the defendant's applicable guideline range.

USSG § 1B1.10(a)(2)(B).

The Court has no authority to reduce a sentence below the mandatory minimum. *See* USSG § 5G1.1(b). The Court will, therefore, reduce Reynolds sentence by three (3) months, from 123 months to 120 months. The Court finds that such a reduction is adequate, but no greater than

necessary, to accomplish the objectives of 18 U.S.C. § 3553(c)(2), while a further reduction would frustrate those objectives.

IT IS THEREFORE ORDERED that the motion for change in sentence [119] pursuant to 18 U.S.C. § 3582(c)(2) be, and are hereby, granted. It is further,

ORDERED that the Defendant Jermaine Reynolds' sentence be, and is hereby, reduced from 123 months to 120 months. It is further,

ORDERED that all other terms and provisions of the original judgment remain unchanged and in full force and effect.

SO ORDERED AND ADJUDGED this the 11th day of June, 2008.

s/ Louis Guirola, Jr.

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE